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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

**DECISION**

Case #: CWA - 172770

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on March 9, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support regarding Medical Assistance, a hearing was scheduled for October 12, 2016, at Washburn, Wisconsin. On October 11, 2016, the parties reached a stipulation that settled this and five other open matters involving the same parties. Hearings scheduled for April 21, 2016, May 18, 2016, June 8, 2016, July 13, 2016, and August 10, 2016, were rescheduled at the petitioner's request.

There is no issue for determination because the parties have reached an agreement.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Attorney for IRIS Consultant Agency,  
The Management Group, LLC  
Reinhart Boerner Van Deuren SC  
22 E Mifflin St # 600  
Madison WI 53703-4225

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Bayfield County.
2. The parties settled this and five related matters as outlined in the stipulation copied in the Discussion portion of this decision.

### DISCUSSION

The petitioner receives medical assistance through the IRIS program. On March 9, 2016, his former guardian filed five appeals against the program; on March 14, 2016, she filed another one. On October 11, 2016, his new guardian, her attorney, and the IRIS program's attorney reached a stipulation resolving all six matters. Although I will issue six decisions, in order to avoid confusion and errors, each will be exactly the same. The stipulation is copied verbatim beginning with the next paragraph. I note that although the parties drafted a "Stipulation and Order," because the Division of Hearings and Appeals' protocol requires its administrative law judges to generate decisions through its computer program, I will make my own order at the end of this decision.

*This matter came before the Division of Hearing and Appeals on August 10, 2016. The Petitioner, [REDACTED] an IRIS (INCLUDE Respect, I Self-Direct) participant/ employer, appeared by phone by his attorney [REDACTED] and by his Guardian, [REDACTED]. The Respondent is The State of Wisconsin, Department of Health Services, by The Management Group, LLC. The Management Group, LLC (TMG) contracts with the Wisconsin Department of Health Services (DHS), which administers the federal Medicaid Waiver for the State of Wisconsin, with the goal of facilitating an alternative to institutionalization for individuals with developmental disabilities. The Management Group, LLC, appeared by phone and by its attorney [REDACTED].*

*IT IS HEREBY STIPULATED AND ORDERED as follows:*

1. *During the time that the steps of this stipulation are followed by both parties, the dollar amount of funding under [REDACTED] IRIS Individual Support and Services plan (ISSP) allocation amount will remain at \$161,323.30 per year as per the amount that iLIFE, the IRIS Fiscal Employer Agent documents for the year July 1, 2015 through June 30, 2016. At a previous Fair Hearing on July 23, 2015, before Division of Hearing and Appeals Judge Michael O'Brien, Case CWA #166825, the Court ordered that funding remain the same until an updated ISSP Plan was completed within 90 days of that hearing. In good Faith, then-guardian, [REDACTED] worked with IRIS consultant, [REDACTED] to complete an updated ISSP, which [REDACTED] submitted for approval on September 29, 2015. Notices of Action to reduce funding were issued on February 29<sup>th</sup>, 2016. The Petitioner filed a request for Fair Hearing, after which point the Division of Hearing and Appeals stayed a reduction of the IRIS Plan Authorization Amount until the conclusion of the Fair Hearing. Therefore, the parties agree that \$161,323.30 (over the course of the Fiscal Year) is the correct and current amount that the Fiscal Employer Agency, iLIFE, is authorized to pay at the time of this stipulation, and that TMG assures that such payment will not be reduced until such a time as the relevant steps of this stipulation are completed. "Relevant steps" means the completion of the long-term care functional screen, receipt of budget estimate amount, any budget amendment completed according to current IRIS Work Instructions, and any denial or approval of budget amendment. By this stipulation, the Petitioner does not waive any of his rights or remedies regarding future adverse action on the part of TMG or DHS.*

2. Mr. [REDACTED] new Guardian is [REDACTED] appointed by Judge [REDACTED] on October 5, 2016. Guardian [REDACTED] shall provide a copy of proof of guardianship to The Management Group, LLC no later than October 17, 2016. For the following portion of this stipulation, "Guardian" means current guardian, [REDACTED]
3. A long-term care functional screen ("LTC-FS") will be completed no later than November 14, 2016, and will comply with all the following requirements:
  - (a) The LTC-FS will be scheduled at least one (1) week in advance;
  - (b) The LTC-FS will occur between the hours of 10:00 AM and 3:00 PM, Monday through Friday;
  - (c) The scheduled LTC-FS will not be cancelled by the screener, TMG, or Mr. [REDACTED] Guardian without good cause. Sufficient notice (at least 24 hours, if possible) shall be provided should the screener, TMG, or Mr. [REDACTED] Guardian have no alternative but to cancel and re-schedule the LTC-FS;
  - (d) Any re-scheduled LTC-FS must also occur before November 14, 2016.
  - (e) Mr. [REDACTED] has selected [REDACTED] to serve as the screener conducting the LTC-FS. Mr. [REDACTED] has been offered a choice of screeners for the purpose of resolving this dispute. For clarity's sake, in the future, TMG will select screeners in accordance with its typical protocol and procedures.
  - (f) The LTC-FS will not take place at the home of Mr. [REDACTED]. This is contraindicated for his mental condition, as he experiences trauma when people that he is not familiar with are in his private space, and this reaction may continue long after the unfamiliar individuals are gone. The LTC-FS shall take place at New Horizons North, Inc., ([REDACTED] supportive employment provider), in Ashland, WI.
  - (g) Mr. [REDACTED] will be physically present, in-person, during the LTC-FS;
  - (h) The screener and IC will be permitted to speak with Mr. [REDACTED] as deemed necessary and appropriate by the screener and IC;
  - (i) The current IRIS Consultant and a TMG supervisor shall also be present during the LTC-FS.
  - (j) If the individual designated by the Guardian to accompany Mr. [REDACTED] believes at any point during the LTC-FS that Mr. [REDACTED] presence at the LTC-FS, or any component of the LTC-FS, has become contrary to Mr. [REDACTED] best interest, the Guardian (or the individual attending on behalf of the Guardian) may remove Mr. [REDACTED] from the LTC-FS; however, this shall not be a basis to challenge the validity of the LTC-FS or the resulting estimated budget amount.
  - (k) The Guardian shall provide the LTC-FS screener with written input from Mr. [REDACTED] primary supportive home care workers, [REDACTED] and [REDACTED]. The screener shall sign a copy of the written information received at the conclusion of the screen, in order to indicate to the guardian that it has been received. The screener's

signature will be retained for Mr. [REDACTED] guardian. The screener shall incorporate all of this written information and other oral/verbal reports during the screening meeting into the final product that the screener submits for review and calculation of eligibility and budget estimate.

- (l) The Guardian, the LTC-FS screener, the IRIS consultant, and TMG supervisor shall correspond via email (or conference call) to discuss the screener's meeting with Mr. [REDACTED]  
[REDACTED]
4. At least one week prior to the LTC-FS, Mr. [REDACTED] Guardian shall sign and return to TMG (via fax or e-mail) Releases of Information for collateral sources. TMG agrees that the Releases of Information will specify that the screener may speak to or correspond with collateral sources; however the Releases signed by the Guardian will direct that the medical and supportive providers have the discretion to provide information that is directly relevant to the screen while ensuring the protection of Mr. [REDACTED] personal health information (as defined in HIPAA.) If the screener determines that certain HIPAA-protected medical records are necessary in order to complete the screen, Mr. [REDACTED] Guardian shall sign Releases of Information to allow screener to obtain such information. Collateral sources may include, but are not limited to the following:
  - (a) Mr. [REDACTED] primary care medical doctor (this is the medical professional who has prescribed Mr. [REDACTED] trauma-informed care psychological safety planning protocol);
  - (b) Mr. [REDACTED] mental health provider(s);
  - (c) Mr. [REDACTED] therapy provider(s);
  - (d) The Medical Assistance Personal Care ("MAPC") agency;
  - (e) Mr. [REDACTED] supportive employment provider: New Horizons North, Inc. (Ashland, WI)
  - (f) Supportive home care providers: [REDACTED] and [REDACTED]
  - (g) Any other collateral source the Guardian would like TMG to contact as part of the LTC-FS.
5. No later than ten (10) business days following the LTC-FS, Mr. [REDACTED] Guardian shall sign and return to TMG any additional Releases of Information for collateral sources TMG, the LTC-FS screener, or the Guardian deems are necessary for the screener to complete the screen document prior to its submission for review and calculation of eligibility and budget estimate. The additional Releases will discussed between TMG, ICA Long-Term Care Functional Screen Manager, [REDACTED] the LTC-FS screener, and the Guardian on a case-by-case basis. If the screener determines that certain HIPAA-protected medical records are necessary in order to complete the screen; Mr. [REDACTED] Guardian shall sign Releases of Information to allow screener to obtain such information;
6. All Releases of Information signed by Mr. [REDACTED] Guardian, [REDACTED] shall allow TMG at least thirty (30) days to contact the identified providers to obtain information necessary to complete the screening process prior to its submission for calculation of eligibility and funding estimate.
7. At least ten (10) business days prior to the LTC-FS, Mr. [REDACTED] Guardian shall provide Mr. [REDACTED] trauma-informed psychological safety planning protocol to TMG. The screener shall become familiar with the protocol prior to the LTC-FS.

8. Mr. [REDACTED] has selected [REDACTED] to serve as his IC, effective immediately. Ms. [REDACTED] shall work with Mr. [REDACTED] former IC, [REDACTED] to ensure a smooth and successful transition. [REDACTED] shall have no further contact with Mr. [REDACTED]
9. TMG and Mr. [REDACTED] Guardian will work together in good faith to follow the following steps:
  - (a) Once the LTC-FS is complete (including contact with collateral resources and review of resulting information), an estimated budget amount will be generated according to an algorithm created by the Wisconsin Department of Health Services (DHS) and outside of TMG's control;
  - (b) Immediately following receipt of the estimated budget amount (if Mr. [REDACTED] needs are not met within the estimated budget amount), the new IC and Mr. [REDACTED] Guardian will immediately begin working cooperatively to gather and complete all required documents necessary in order to submit a complete request for Budget Amendment to DHS for review;
  - (c) Mr. [REDACTED] Guardian shall timely provide any and all documentation regarding any additional services necessary to meet Mr. [REDACTED] needs, including but not limited to a need for additional mileage. This documentation may include but is not limited to notes or prescriptions from Mr. [REDACTED] primary care provider or existing mental health therapist.
  - (d) Within thirty (30) days of receipt of the estimated budget amount, TMG and Mr. [REDACTED] Guardian will submit a completed Budget Amendment request (completed according to IRIS Work Instructions) to DHS for review;
  - (e) If the Budget Amendment is approved by DHS, TMG will inform the Guardian of the approval. If approved, the IC will update the ISSP with the approved amount and confirm with the guardian that the ISSP update is correct and mail the Guardian a copy of the ISSP within five (5) business days of the approval. The Guardian will agree to sign the ISSP and other ISSP's moving forward as required by the IRIS program.
  - (f) If the Budget Amendment is denied in part or in full, the Guardian may request an Independent Review with DHS within 10 days of the denial decision. If the Independent Review denial decision is upheld, the Guardian will receive a Notice of Action with appeal rights.
10. Mr. [REDACTED] Guardian will sign all participation education forms after they are received and discussed with her, and in compliance with IRIS guidelines. All rights, notices, requirements, and the like are included on the participant education form. The IC shall provide all notices of Mr. [REDACTED] rights to the Guardian.
11. TMG shall provide the new format for the emergency back-up plan to Mr. [REDACTED] Guardian immediately upon receipt of proof of Guardianship. Mr. [REDACTED] Guardian will complete an Emergency Back-Up Plan (using the new format) as soon as possible, but no later than 60 days after execution of this Stipulation.

12. TMG shall provide the Guardian with a copy of the DHS-approved format for behavior support plans. The Guardian will ensure that Mr. [REDACTED] behavior supports are documented with TMG. The Guardian will provide a copy of Mr. [REDACTED] Behavior Support Plan within 30 days of receipt of the format and in compliance with IRIS guidelines.
13. Mr. [REDACTED] Guardian and TMG will work collaboratively to develop an ISSP update to meet Mr. [REDACTED] immediate needs as well as transitional plans regarding Mr. [REDACTED] future care and placement.
14. Mr. [REDACTED] Guardian retains the right to utilize Mr. [REDACTED] legal counsel, Attorney [REDACTED] as she deems in Mr. [REDACTED] best interest. At the Guardian's request, Attorney [REDACTED] may attend any meetings with advance notice (at least 24 hours) to TMG. TMG may have an IC supervisor or Area Director present for meetings between TMG and Mr. [REDACTED] Guardian with advance notice (at least 24 hours) to Mr. [REDACTED] Guardian.

/S/ \_\_\_\_\_  
 [REDACTED]  
 Legal Guardian of Person and Estate  
 for Olaf A. [REDACTED]

October 10, 2016  
 \_\_\_\_\_  
 Date

/S/ \_\_\_\_\_  
 [REDACTED]  
 Attorney for Petitioner, Olaf A. [REDACTED]

October 11, 2016  
 \_\_\_\_\_  
 Date

/S/ \_\_\_\_\_  
 [REDACTED]  
 Attorney for IRIS Consultant Agency,  
 The Management Group, LLC

October 11, 2016  
 \_\_\_\_\_  
 Date

### **CONCLUSIONS OF LAW**

This matter was properly resolved by a stipulation.

**THEREFORE, it is**

**ORDERED**

That the agreement of the parties is the order of the Division of Hearing and Appeals, and this matter is remanded to the Bureau of Long-Term Support and the Management Group (IRIS) with instructions to certify within 10 days of the date of this decision that it has carried out its provisions.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

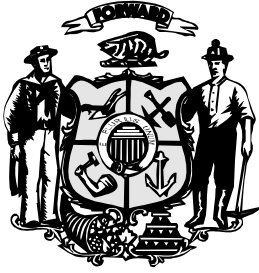
## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of October, 2016

\s \_\_\_\_\_  
Michael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on October 25, 2016.

Bureau of Long-Term Support

Attorney [REDACTED]

Attorney [REDACTED]